

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36091/36092

STATE OF IDAHO,)	2009 Unpublished Opinion No. 664
)	
Plaintiff-Respondent,)	Filed: November 4, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
TYLER ANDERSON,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. G. Richard Bevan, District Judge.

Order revoking probation and ordering into execution previously imposed sentences, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before GUTIERREZ, Judge, GRATTON, Judge
and MELANSON, Judge

PER CURIAM

Tyler Anderson was charged with lewd conduct with a minor under sixteen in case number 36091, and with two counts of lewd conduct with a minor under sixteen, in case number 36092. Pursuant to a plea agreement, Anderson pled guilty to an amended charge of rape, Idaho Code § 18-6101(1), in case number 36091, and to one count of lewd conduct with a minor under sixteen, I.C. § 18-1508, in case number 36092 and the state agreed to dismiss the other charge and agreed to recommend that the sentences run concurrently. The cases were consolidated for all purposes. The district court sentenced Anderson to concurrent unified sentences of fifteen years, with three years determinate, for the rape charge and to fifteen years, with four years

determinate, for the lewd conduct charge and the district court retained jurisdiction in both cases. After Anderson completed his rider, the district court suspended the sentences and placed Anderson on probation for seven years. Anderson subsequently violated the terms of his probation and the district court revoked his probation, ordered the underlying sentences into execution and again retained jurisdiction. After Anderson completed his second rider, the district court suspended the sentences and again placed him on probation for seven years. Anderson again violated the terms of his probation and the district court revoked his probation and ordered the sentences in both cases into execution. Anderson appeals from the revocation of his probation, not contesting the revoking of his probation but rather the ordering into execution of his previously imposed sentences without reduction.

Upon revoking a defendant's probation, a court may order the original sentence executed or reduce the sentence as authorized by Idaho Criminal Rule 35. *State v. Hanington*, ___ Idaho ___, ___ P.3d ___ (Ct. App. 2009) (citing *State v. Beckett*, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992); *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989)). A court's decision not to reduce a sentence is reviewed for an abuse of discretion subject to the well-established standards governing whether a sentence is excessive. *Hannington*, ___ Idaho at ___, ___ P.3d at ___. Those standards require an appellant to "establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment." *State v. Stover*, 140 Idaho 927, 933, 104 P.3d 969, 975 (2005). Those objectives are: "(1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrong doing." *State v. Wolfe*, 99 Idaho 382, 384, 582 P.2d 728, 730 (1978). The reviewing court "will examine the entire record encompassing events before and after the original judgment," i.e., "facts existing when the sentence was imposed as well as events occurring between the original sentencing and the revocation of probation." *Hannington*, ___ Idaho at ___, ___ P.3d at ___.

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion in failing to reduce the sentences upon revoking probation. Therefore, the order revoking probation and directing execution of Anderson's previously suspended sentences is affirmed.